VIRGINIA A. RAPOZO

IBLA 77-497 Decided January 18, 1978

Appeal from a decision of the Utah State Office, Bureau of Land Management dated July 19, 1977, rejecting a successful offer in a public oil and gas lease drawing. U 35919.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

   Where an entry card in a public drawing is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

2. Oil and Gas Leases: Applications: Generally

   Where a drawing entry card submitted in a simultaneous oil and gas lease filing has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play other requirements of pertinent regulations.

APPEARANCES: Lucia A. Fakonas, Attorney, Martori, Meyer, Hendricks & Victor, Phoenix, Arizona, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Virginia A. Rapozo appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 19, 1977, rejecting her oil and gas lease offer, U 35919. The land in question consists of a 960-acre parcel located in secs. 20 and 29, T. 38 S., R. 22 E., Salt Lake meridian, San Juan County, Utah. Appellant was

determined to be the successful applicant for a lease on this parcel at a public drawing on November 29, 1976, held pursuant to 43 CFR Subpart 3112.

On December 29, 1976, and January 5, 1977, D. E. Pack and Newhall Land and Farming Company, respectively, filed protests against Appellant's offer on the grounds that the address used in the entry card was not a "true" address but the address of agents. In fact, the address belonged to American Standard Oil and Gas Leasing Service, Inc. (American Standard) of Scottsdale, Arizona.

BLM decisions dated January 17, 1977 and April 13, 1977, required Appellant to elucidate any interest that American Standard might have in Appellant's offer and American Standard's role in the offer's preparation. An extensive correspondence between BLM and Appellant in the succeeding months developed the following facts. Appellant claims that she signed the lease offer and submitted it to American Standard where American Standard's geologist Dr. Burt Silver and his staff filled in the parcel to be bid on. American Standard, in addition, received all correspondence concerning the offer and advanced the first year's rental payment, later to be reimbursed by Appellant. Appellant has consistently maintained that American Standard's function was restricted solely to providing advice and administrative assistance and that American Standard had no material interest in the lease offer.

BLM rejected Appellant's offer by a decision dated July 19, 1977, on the grounds that:

> [B]ecause American Standard formulated the offer on behalf of the offeror and used its authority to exercise discretion in other ways concerning the offer, it was not acting in a purely mechanical capacity as an amanuensis. Therefore, American Standard was the offeror's agent within the meaning of 43 CFR 3102.6-1(a)(2). Since this agency did exist, the provisions of the regulation apply, and require the filing of separate statements of interest by both the offeror and American Standard. No such statements accompanied the offer. Accordingly, the offeror is not qualified and the offer must be rejected. D. E. Pack, 30 IBLA 166 (May 10, 1977).

[1] We hold BLM's rationale to be inapplicable in the absence of a finding that American Standard rather than Appellant had signed Appellant's name to the lease offer. Accordingly we reverse.

43 CFR 3102.6-1(a)(2), upon which BLM relies, provides:

> (2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorneys in fact or agent or such other person has received or is to receive any interest in the lease when issued including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one * * *. [Emphasis added.]

BLM's interpretation fails to give effect to the first 12 words of the regulation. Clearly, the section mandates separate statements by the principal and the agent only where the agent signs the lease offer.

We believe that the BLM State Office has misconstrued our decision in D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). We therefore take the opportunity to recapitulate the principles laid down by Pack and similar cases for applying 43 CFR 3102.6-1(a)(2). Evelyn Chambers, 31 IBLA 381 (1977); D. E. Pack, 31 IBLA 283 (1977). These cases establish a two-pronged test for determining the applicability of the separate signed statements requirement: (1) was the offer entry card signed by someone other than the offeror? and (2) if so, was the person the offeror's "agent" or "attorney-in-fact" or merely the offeror's "amanuensis?" Both factors must be present before the requirements of 43 CFR 3102.6-1(a)(2) come into play; neither factor alone is sufficient. In the Pack case, on which the State Office relied, the offer was not signed by the offeror himself, but by one whom the decision found to be an "agent." Here the offeror himself signed the entry card.

As we have held several times, if the signature was affixed by the offeror, the requirements of 43 CFR 3102.6-1(a)(2) do not apply. D. E. Pack, 31 IBLA 283 (1977). This is so even if the nominal offeror has no interest in the lease, A. M. Shaffer, 73 I.D. 293 (1966), or if the offeror has applied his signature with a rubber stamp or other mechanical device. Evelyn Chambers, 31 IBLA 381 (1977).

On the other hand, if the signature has been affixed by a person other than the offeror, the distinction between agent or attorney-in-fact, and an amanuensis becomes relevant. Charlotte L. Thornton, 31 IBLA 3 (1977); Arthur S. Watkins, 28 IBLA 79 (1976); Evelyn Chambers, 27 IBLA 317 (1976); Robert C. Leary, 27 IBLA 296 (1976). An agent or attorney-in-fact has discretionary authority in dealing

with the lease offer and must submit a separate signed statement. An amanuensis, such as a secretary, handles the offer in a purely mechanical way, and need not submit a statement.

Thus, in the present case, BLM properly made inquiry into the circumstances surrounding the making of the offer, 1/ but absent a finding that American Standard had applied the signature, a requirement for separate statements was unwarranted. 2/

[2] Nor do grounds for rejection lie in the fact that Appellant signed an uncompleted form, which was then further prepared by American Standard. Where the entry card has been signed by the applicant, its completion by a duly authorized agent, all else being regular, does not call into play any other provision of this regulation. Evelyn Chambers, supra; D. E. Pack, supra.

Thus, absent a finding that the entry card was not in fact signed by Appellant, and all else being regular, the lease should be awarded to Appellant. 3/

1/ Where a signature has been affixed by a rubber stamp or other mechanical device, BLM normally should make inquiry. Nadine H. Sanford, 31 IBLA 184 (1977); William J. Sparks, 27 IBLA 330 (1976). A handwritten signature, in contrast, usually carries with it the presumption that it was signed by the offeror. Other circumstances, however, may properly trigger inquiry at BLM's discretion. D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977).

2/ Under the predecessor of 43 CFR 3102.6-1(a)(2), formerly 43 CFR 192.42(e)(4)(i), separate statements might be required where either the agent signed the offer or if any agent had been authorized to act on behalf of the offeror with respect to the offer or lease. Revision of the regulations at 29 FR 4511 (March 31, 1964), however, rendered the latter provision redundant and eliminated it, since an offeror is required by 43 CFR 3102.7 either to affirm that he is the sole party in interest or to declare the identity of other parties in interest and offer a separate statement signed by the offeror and the other parties in interest, see Pan American Petroleum Corp. v. Udall, 352 F.2d 32, 35 (10th Cir. 1965); A. M. Shaffer, supra at 299-300.

3/ We also take the opportunity to note another objection raised by protestants to Appellant's offer. No valid grounds for rejection lie in the protestant's charge that the address on Appellant's entry card being that of a leasing service, is not a "true" address. We have held that the use of a leasing service's address on an entry card is not improper, Nadine H. Sanford, 31 IBLA 184 (1977); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); John V. Steffens, 74 I.D. 46 (1967).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge